

SECTION: REMARKS

This reply is submitted pursuant to 35 U.S.C. §132 and 37 C.F.R. §1.111. The Office Action was carefully considered by the undersigned attorney and applicant. Reconsideration of the application is respectfully requested.

As the Office Action was “Final”, this reply is submitted with a Request for Continuing Examination (RCE).

**1. Summary of the Office Action.**

The drawings were objected to.

Claims 1-5, 7, 9-11, and 13 were pending.

Claims 1, 2, 3 and 7 stand rejected under 35 U.S.C §102(b) over Renholdt (1,442,361)

Claims 1, 2 and 10 stand rejected under 35 U.S.C §102(b) over Appelhoff (1,467,772)

Claim 13 stands rejected under 35 U.S.C §102(b) over Andrews (3,402,407)

Claims 1, 2 and 7 stand rejected under 35 U.S.C §102(b) over Hermann Jr. (5,043,082)

Claims 4 and 5 stand rejected under 35 U.S.C §103(a) over Appelhoff in view of Williams (4,232,407)

Claim 11 stands rejected under 35 U.S.C §103(a) over Appelhoff in view of Hartmann et al (DE 4434544 C1)

Claims 9 and 13 stand rejected under 35 U.S.C §102(b) over Taggart (5040,252) in view of Renholdt.

**2. Discussion.**

**Drawing Objections**

Corrected drawings are submitted.

**Claim Rejections - 35 USC §102-103**

**Claim 1.** This claim was rejected under 35 USC §102(b) as being anticipated by Renholdt, Appelhoff, and Hermann,Jr. et al. The claim is amended to patentably distinguish and limit over these references by defining the evidence collection device to require that the housing and the lid define, together, a closable chamber in which the collected evidence is held. This structure and function is not shown, suggested or made obvious by the references, either alone or in combination with each other.

In contrast, **Renholdt** relates to a drain outlet stopper/strainer , not to an evidence collection device. It comprises a strainer frame (held by the examiner to be a housing) 10 with a strainer 11, and a stopper (lid) 12 adapted to substantially completely fill the strainer frame. As shown in Figure 3, when the stopper is fitted, the metal disc 18 directly and completely engages the strainer. As a result, if the Renholdt device were used as an evidence collection device, there would be the risk that the evidence collected by the device, which evidence would be located upon

the strainer, could be crushed or otherwise damaged by the lid, particularly during the operation of fitting the lid in position. The resulting degraded collection would likely be unsuitable for subsequent analysis. Clearly, therefore, the Renholdt device could not be used as an evidence collection device.

Regarding the **Appelhoff** drain outlet strainer, the Examiner has argued that, in use, the common drain plug 7 (lid) is “made fast” (secured) to the strainer basket (housing) 9. Applicants respectfully disagree with the Examiner. Applicants accept that, in use, when the associated sink, basin, etc. contains a quantity of liquid, the liquid will serve to hold the plug in position. However, if used as an evidence collection device, after passage of the liquid through the housing to collect any evidence carried with the liquid, the plug is not positively securable to the housing. There would thus be the risk of the plug coming away from the basket and therefore a risk of loss of some or all of the collected evidence and/or contamination of the collected evidence. Further, referring to column 3, lines 35-40 the design is such that the strainer cannot be removed from the drain outlet unless the plug is first removed and the user inserts his fingers. Finally, the provision of the slot opening 14 results in the housing not being closed even when the plug is fitted. These features both give rise to an increased risk of contamination, in use.

Regarding **Hermann, Jr. et al.** urine collection device, applicants previously submitted that the urine collector is not useable in a bath, sink or basin in the manner of the present invention. It is not of a diameter suitable to fit within an outlet and, even if it did, would project upwardly from the outlet to such an extent that it would not be possible to empty the basin through the housing. The claim amendment emphasizes this distinction.

The invention as amended has the clear and substantial advantage of capturing, preserving and securing collected material for evidence purposes. Withdrawal of the rejection is requested.

**Claim 2.** This dependent claim stands rejected under 35 USC 102(b) over Renholdt, Appelhoff, and Hermann, Jr. et al. The claim (which is amended for format only) requires that the strainer openings are small enough to filter retain human cells in combination with the structure of amended claim 1. This structure and function is not shown, suggested, nor rendered obvious by the applied references. **Renholdt** shows strainer 11 in Fig. 5 with relatively large mesh size and makes no mention or even suggestion that it is capable of capturing cellular particles. **Appelhoff** also shows a relatively large “screen or wire mesh” for capturing “matches, chewing gum, bits of paper and other debris.” The claim is believed to be patentable for this reason in addition to those urged with respect to its base claim above.

**Claim 3** Claim 3 has been amended to depend from claim 2.

**Claim 5.** This dependent claim stands rejected under 35 USC 103(a) over Appelhoff in view of Williams. The claim is amended to further distinguish the invention and requires that the engineered strainer with smaller openings in the middle and larger openings outward provide vortex flow. **Claim 4** from which it depends has also been amended to depend from claim 2 so that claim 5 now requires a strainer for capturing human cellular particles. This structure and function is not shown or suggested in the applied references. **Appelhoff** shows a screen with large uniform screen or mesh openings and **Williams** discloses a common basket style sink strainer with even larger perforations 15. Neither discloses or suggests vortex capability. Applicants’ invention has the advantage of capturing cellular particles and at the same time permitting water flow for expeditious draining. The claim is believed to be patentable for this reason in addition to those urged with respect to its base claim above.

**Claim 10.** This dependent claim has been amended for consistency with the amendment to claim 1.

**Claims 3, 4, and 9-11.** These claims are all dependent claim; each such claim adds at least one limitation to the elements of the base claim and is therefore deemed to be allowable with such base and any intervening claim, at least for this reason. Amendments were made to some of these claims in view of the amendments to the base claims, rejections, cancellation of claims, or for clarity.

**Claim 13.** This claim was rejected under 35 USC §102(b) as being anticipated by Andrews and under 35 USC §103(a) over Taggart in view of Renholdt. The claim is amended to patentably distinguish and limit over Andrews by defining the invention to require a closed volume for safely holding evidence matter similar to amended claim 1. This structure and function is not shown, suggested or made obvious by the applied references. Firstly, applicants previously argued that Andrews does not provide a lid "securable to" the housing to close the housing. The Examiner disagreed. Applicants again respectfully disagree with the Examiner. Although in use the weight of water will hold the lid in position, when no water is present or when the device is removed from the outlet, it is not possible to secure the lid in its closed configuration. The risk of loss or contamination of evidence is therefore again present. Secondly, Andrews does not show or suggest the closed volume. Fig. 2 shows the cap 28 substantially abutting the screen 22. Taggart merely discloses a construction cover 10 for a bathtub, including a suction cup 70. The invention as amended has the advantages discussed above with respect to claim 1. Withdrawal of the rejection is requested.

**Claim 14.** This independent "apparatus" claim is new. The claim has all the limitations of currently amended claim 1 and has further elements to patentably distinguish and limit over the applied prior art, including (1) a screw threaded securement of the lid to the housing, (2) small screen to trap human cells, and (3) engineered screen size distribution to create vortex flow. This structure

and function is patentably significant and not shown, suggested or made obvious by the applied references as was discussed above with respect to claims 1, 2 and 5. It is submitted that this amendment clearly indicates a narrower interpretation than that of currently amended claim 1, which interpretation patentably avoids the applied art. Withdrawal of the rejection is requested.

**Claim 15.** This independent “method” claim is new. The claim has all the limitations of currently amended claims 1 and 10 and has further elements to patentably distinguish and limit over the applied prior art, including the steps of (1) placing the evidence collection device in a drain with it’ slid closed to prevent pre-contamination, and (2) analyzing collected matter for evidence. This structure and function is not shown, suggested or made obvious by the applied references. It is submitted that this amendment clearly indicates a narrower interpretation than that of currently amended claim 10, which interpretation patentably avoids the applied art. Withdrawal of the rejection is requested.

### **3. Conclusion.**

The claims pending after this amendment are believed to be patentable for the reasons stated above. The amendments are believed to be supported by the specification, claims and drawings as filed. It is believed that this case is now in a condition for allowance. Reconsideration and favorable action are respectfully requested.

**Should the Examiner believe that telephone communication would advance the prosecution of this case to finality, he is invited to call at the number below.**

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time under 37 CFR 1.136(a), provided a Petition is not submitted separately.

Please charge any fee due not paid by a check or credit card provided herewith, and/or charge any underpayment in any fee, and/or credit any overpayment in fee, to Deposit Account No. 19-2381.

<u>Any fees due are calculated as follows:</u>	<u>Number</u>	<u>Fee</u>
TOTAL claims remaining over that previously paid for:	None	\$0
INDEPENDENT claims remaining over that previously paid for:	1	\$44
	SUM claim fees:	\$44
EXTENSION fees:		\$55
OTHER fees:		\$395
	<u>TOTAL AMOUNT (if any)</u>	<u>\$494</u>
[ ] Paid by enclosed check.		
[x] Paid by enclosed Credit Card Payment Form(s) PTO-2038.		

Respectfully submitted,



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**REQUEST FOR EXTENSION OF TIME**

Pursuant to 37 C.F.R. 1.136(a), Applicant(s) requests that a 1 month extension be granted in which to file the attached communication from the applicant(s).

A \$ 55 payment, for a  small  large entity, is enclosed for the fee required under 37 CFR 1.17.

Please charge any additional or underpayment in fee due, or credit any overpayment, to Deposit Account No. 19-2381.

Respectfully submitted,



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Date: 11-15-04

Final OA Reply